BILL NO. S-93-09-06

SPECIAL ORDINANCE NO. S-78-93

AN ORDINANCE GOVERNING THE PROCEDURES AND STANDARDS FOR THE REGULATION OF CABLE TELEVISION RATES PURSUANT TO THE RULES OF THE FEDERAL COMMUNICATIONS COMMISSION AND THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. **BACKGROUND AND PURPOSE.**

A. On the 19th day of July, 1978, the City of Fort Wayne, Indiana ("City") passed and adopted Ordinance No. G20-78 granting to Citizens Cable ("Grantee") the non exclusive right to construct, own, and operate a cable television system in the City.

B. On the 12th day of March, 1986, the City passed and adopted Ordinance S35-86 approving the transfer of Citizens Cable stock to Comcast Cablevision of Indiana, L.P.

C. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") was enacted on October 5, 1992, and became effective on December 4, 1992. The 1992 Cable Act amends the Cable Communications Police Act of 1984 and, in particular, Section 623 (47 U.S.C. 543) governing the regulation of rates charged by cable television operators.

D. On April 1, 1993, the Federal Communications Commission ("FCC") adopted rate regulations pursuant to the 1992 Cable Act. These FCC rate regulations were released May 3, 1993, and became effective September 1, 1993.

E. Pursuant to 47 C.F.R. Part 76.900, Subpart N, Section 76.910, on the 30th day of August, 1993, the City submitted FCC Form 328--Certification for Local Franchising Authorities--to the FCC via Registered mail, Return Receipt Requested. Pursuant to Section 76.910, the date on the return receipt, September 2, 1993, is to be considered the date filed. A copy of FCC Form 328 was also served on Grantee on August 30, 1993, the same day it was filed with the FCC.

F. Pursuant to Section 76.910, the City's certification becomes effective 30 days after the date filed.

G. In adopting this Ordinance, the City reviewed applicable FCC regulations governing the basic service tier and provided a reasonable opportunity for consideration of the views of interested parties.

H. This Ordinance will govern the procedures to be undertaken by the City for the regulation of

Grantee's cable television rates pursuant to the 1992 Cable Act and the regulations of the FCC.

SECTION 2. FULL REGULATORY POWER RESERVED.

All rates and charges for basic cable service and any other cable programming services, as defined by the 1992 Cable Act and applicable FCC regulations, shall, to the extent permissible, be subject to regulation by the City in a manner provided by this Ordinance. This Ordinance shall apply to all cable television system operators in the City. The Grantee and/or any other operator of a cable television system operating in the City shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47.C.F.R., Part 76.900, Subpart N.

The City reserves the right to amend this Ordinance from time to time consistent with the requirements of the FCC, and state and federal law.

SECTION 3. PROCEDURES FOR IMPLEMENTING REGULATION OF BASIC CABLE SERVICE.

A. The City hereby adopts and shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

B. Upon adoption of this Ordinance, the City Clerk will send to Grantee each operator of cable television system in the City, via Certified Mail, Return Receipt Requested, a written notice, which shall include a copy of this Ordinance and the completed FCC Form 328.

C. Within thirty (30) days after receipt of the notice referenced in Section 3.B., Grantee and any other cable television operator shall have thirty (30) days to respond with rate and benchmark information utilizing FCC Form 393--Determination of Maximum Initial Permitted Rates For Regulated Cable Services and Actual Cost of Equipment.

1. If the initial rates and/or any subsequent rate increases are within the FCC standards, the rates will be effective thirty (30) days after submission.

2. If the City unable to determine whether the rate in issue is within the FCC's standards, based on the material before it, or if the Grantee or any other cable operator has submitted a cost-of-service showing seeking to justify a rate above the FCC's reasonable rate level, the City may take an additional period of time to make a final determination and toll the effective date of the proposed rates for a commensurate period.

   a. The City may take an additional 90 days if it needs more time to ensure that a rate is within the FCC's rate standards.

   b. The City may take an additional 150 days to evaluate a cost-of-service showing seeking to justify a rate above the reasonable rate level.

c. The City must issue a brief written decision regarding its invocation of the additional time period.

3. If no action is taken within the above referenced time periods, the proposed rates will got into effect, subject to subsequent refund orders if the City later issues a decision disapproving any portion of the proposed rates.

4. In all cases, the City will issue a written decision to approve the rate schedule, disapprove the rate schedule or continue for review.

5. If rates are in excess of the FCC's standards, the rates may be reduced by the City pursuant to applicable FCC regulations.

D. After the initial rate schedule procedures are followed, as described in this Section, Grantee and/or any other cable operator shall, in conjunction with each change in the rates and charges applicable to basic cable service, conform to the standards of the FCC. Before any rate change is effective, Grantee and/or any other cable operator shall notify the City of its requested rate change by giving the City thirty (30) days advance written notice before the change is effective and by providing the City with its rates and applicable information pursuant to FCC regulations.

E. To the extent specifically permitted by federal law and applicable FCC rules, Grantee and/or any other cable operator shall be permitted to appeal to the FCC for a review of the decision of the City.

SECTION 4. CONSULTANT COSTS.

A. The City may utilize a rate consultant to advise it on proposed rate changes and to assist it in the procedures and the standards for review adopted by the FCC. A rate consultant may be any person who has sufficient background and experience, in the sole opinion of the City, to properly evaluate and analyze rates and charges.

B. All costs for the review of initial rates or rate changes shall be paid by the cable operator upon demand of the City, unless contrary to applicable rules of the FCC governing these procedures or unless otherwise specifically preempted by state or federal law. The costs shall include, but not be limited to, rate consultants, attorney's fees and the reasonable value of services (as determined by the City) rendered by the City or any City employees, agents or representatives of the City.

SECTION 5. APPLICATION OF THE REQUIREMENTS IN THIS ORDINANCE.

The requirements described in this Ordinance are applicable to the Grantee and all operators of cable television systems within the City subject to rate regulation according to the 1992 Cable Act and applicable FCC rules.

SECTION 6. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM
AND LEGALITY

J. TIMOTHY MCCAULAY, CITY ATTORNEY

Read the first time in full and on motion by Lunsey, seconded by ~~_____~~, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) ~~and Public Hearing to be held~~ after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____ M., E.S.T.

DATED: 9-14-93

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Lunsey, ~~seconded by _____~~, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY				✓
EDMONDS	✓			
GiaQUINTA				✓
HENRY	✓			
LONG	✓			
LUNSEY	✓			
RAVINE	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 10-26-93

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) ~~(ZONING)~~ ORDINANCE ~~RESOLUTION~~ NO. S-78-93 on the 26th day of October, 19 93

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Thomas C. Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of October, 19 93, at the hour of 2:30 o'clock P. ,M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 2nd day of November, 19 93, at the hour of 10:30 o'clock A M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

THE CITY OF FORT WAYNE

FORT WAYNE - A WORLD - CLASS COMMUNITY

Paul Helmke
Mayor

DATE: September 10, 1993

TO: Fort Wayne Common Council

FROM: Debbie Gillespie
Office of the Mayor

SUBJECT: Rate Regulation Ordinance S-93-09-06

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The attached ordinance provides procedures and standards for the regulation of basic cable television rates in Fort Wayne. The ordinance is procedural in nature and will provide the City with the opportunity to review cable rates. If the ordinance is adopted and the City is "certified" as a rate regulating authority by the Federal Communications Commission, the City Council will be able to regulate basic cable rates and equipment charges associated with the delivery of basic cable rates in the future as long as there is an absence of effective competition. If effective competition becomes available in the Fort Wayne marketplace the City's authority to regulate rates would end.

On September 1, 1993 Comcast Cablevision increased the basic cable television rates from $6.95 to $7.66 per month. The FCC certification and this ordinance will give the City the ability to receive from Comcast its FCC Form 393 (Request for Cable Rate Approval). Form 393 provides detailed information regarding the cable company's rates and the rates permitted by the FCC. Upon certification by the FCC we anticipate bringing a resolution to City Council to designate the Cable Franchise Advisory Committee as the committee to review rates and make recommendations to the City Council.

Admn. Appr._____

DIGEST SHEET

TITLE OF ORDINANCE Rate regulation ordinance for cable television

DEPARTMENT REQUESTING ORDINANCE Mayor's Office

SYNOPSIS OF ORDINANCE This procedural ordinance will give the City the ability to review basic cable rates and equipment charges for delivery of basic cable television, and regulate those rates if Council determines them to be unreasonable.

EFFECT OF PASSAGE Ability to review and regulate cable tv rates

EFFECT OF NON-PASSAGE City will not be able to regulate cable tv rates

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) Potential savings to cable subscribers. City staff time will be only direct cost, but will be limited with use of Cable Franchise Advisory Committee.

ASSIGNED TO COMMITTEE (PRESIDENT)_____

BILL NO. S-93-09-06

REPORT OF THE COMMITTEE ON
FINANCE

ARCHIE L. LUNSEY & DONALD J. SCHMIDT - CO-CHAIRPERSONS
HENRY, EDMONDS, LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) GOVERNING THE PROCEDURES AND STANDARDS FOR THE REGULATION OF CABLE TELEVISON RATES PURSUANT TO THE RULES OF THE FEDERAL COMMUNICATIONS COMMISSION AND THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Archie Lunsey			
Jimmy C. Henry			
Vicki Long			
C R Edmonds			

DATED: 10-26-93.

Sandra E. Kennedy
City Clerk